

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANNA WASSERMAN	:	DETERMINATION
	:	DTA NO. 817032
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Tax under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York	:	
for the Year 1990.	:	

Petitioner, Anna Wasserman, 2300 Olinville Avenue, Apt. 8F, Bronx, New York 10467, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 1990.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on February 23, 2000 at 12:00 P.M., with all briefs to be submitted by March 22, 2000, which date began the six-month period for the issuance of this determination. Petitioner, a person mentally or physically incapable of filing a petition or appearing on her own behalf, appeared by her son, Ralph Wasserman. The Division of Taxation appeared by Barbara G. Billet, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for refund pursuant to Tax Law § 687(a).

FINDINGS OF FACT

1. Petitioner, Anna Wasserman, filed her 1990 New York State Resident Income Tax Return on April 15, 1995. Petitioner reported taxable income of \$29,853.71, with New York State and City income tax due thereon of \$2,953.00. Petitioner reported estimated tax payments of \$8,600.00 and thus reported an overpayment of tax of \$5,647.00. Petitioner requested that \$5,600.00 of the overpayment be applied to her 1991 estimated tax and that \$47.00 of the overpayment be refunded.

2. Between April 16, 1990 and April 13, 1991, petitioner made five payments of estimated tax for the 1990 tax year, which totaled \$8,600.00. Petitioner made no payments of tax for 1990 after April 13, 1991.

3. Petitioner applied for and received an automatic four-month extension of time to file her 1990 income tax return until August 15, 1991.

4. On December 28, 1995, the Division of Taxation issued a Notice of Disallowance to petitioner which disallowed her claim for credit and refund for the 1990 tax year.

CONCLUSIONS OF LAW

A. Generally, a claim for credit or refund of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later (Tax Law § 687[a]). The three-year period is applicable in this case. If the claim is filed within the three-year period, the amount of refund allowable may not exceed

the portion of tax paid within the three-year period immediately preceding the filing of the refund claim plus the period of any extension of time for filing the return (*id*).

B. Petitioner's refund claim was filed as part of her 1990 income tax return on April 15, 1995. Petitioner did not pay any portion of her 1990 overpayment of tax claimed as a refund during the three-year period immediately preceding the filing of the refund claim (*see*, Finding of Fact "2"). Accordingly, the Division properly denied petitioner's refund claim pursuant to Tax Law § 687(a).

C. Petitioner contends that the application of Tax Law § 687(a) in this case is essentially a penalty for filing a return late and that such application results in a confiscation of petitioner's overpayment of tax. Petitioner asserts that, since penalties may be waived, the application of section 687(a) should similarly be waived in this case in the interests of justice.

Petitioner's contention must be rejected. Section 687(a) is not a penalty provision. It is, rather, a statute of limitations. Periods of limitations are "established to cut off rights, justifiable or not, that might otherwise be asserted and they must be strictly adhered to by the judiciary" (*Kavanagh v. Noble*, 332 US 535, 539; *see also, Cohen v. Pearl River Union Free School Dist.*, 70 AD2d 94, 419 NYS2d 998). Accordingly, notwithstanding petitioner's overpayment for the year at issue, her claim must be denied pursuant to Tax Law § 687(a).

D. The petition of Anna Wasserman is denied and the Division of Taxation's Notice of Disallowance dated December 28, 1995 is sustained.

DATED: Troy, New York
May 4, 2000

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE